

# REPORT / RECOMMENDATION



**To:** MAYOR AND COUNCIL

**Agenda Item #:** VI. A.

**From:** Chad A. Millner, PE, Director of Engineering

**Action** ☒

**Discussion** ☐

**Date:** June 3, 2014

**Information** ☐

**Subject:** Public Hearing – Consider Vacation of Public Right-of-Way, Portion of West 67<sup>th</sup> Street, Resolution No. 2014-61

**Action Requested:**

Approve attached Resolution No. 2014-61.

**Information / Background:**

This request comes from Xerxes investors, LLC. During the title research associated with the redevelopment project at 6725 York Avenue and 6712, 6708, 6704, 6700, and 6628 Xerxes Avenue, it was discovered that the 1965 resolution vacating West 67 Street created a gap in the title. Approval of this resolution will allow Hennepin County to fix the gap.

This correction should occur with or without the redevelopment of the area.

Staff recommends Council Approve Resolution No. 2014-61

**Attachments:**

Resolution No. 2014-61  
Public Right Of Way Vacation Application with sketch  
Notice of Public Hearing  
Hennepin County Memo  
Portion of the Minutes of Edina City Council, October 18, 1965

G:\PW\ADMIN\COMM\EXTERNAL\GENERAL CORR BY STREETS\Y Streets\6725 York - Former Wicks Site\Vacation\Item VI. A. Public Hearing - Vacation Request.docx



**RESOLUTION NO. 2014-61  
VACATING A PORTION OF WEST 67th STREET**

**WHEREAS**, a petition was received on March 25, 2014, from Xerxes Investors, LLC who owns a majority of the property abutting West 67<sup>th</sup> Street dedicated in the plat of York Terrace requesting that it be vacated; and

**WHEREAS**, a 1965 Edina City Council Resolution vacated West 67<sup>th</sup> on October 18, 1965; and

**WHEREAS**, the 1965 Resolution was vague in its legal description and created a gap in the title work; and

**WHEREAS**, two weeks published and posted notice was given and the hearing was held on June 3, 2014, at which time all persons desiring to be heard were given an opportunity to be heard thereon; and

**WHEREAS**, the City Council deems it to be in the best interest of the City and of the public that said vacation be corrected; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Edina, Hennepin County, Minnesota:

1. That the following described right-of-ways are hereby vacated:

All that part of West 67th Street dedicated in the plat of YORK TERRACE, according to the recorded plat thereof, lying east of a line drawn from the Southeast corner of Tract Q, Registered Land Survey No. 432 to the Northeast corner of Tract P, said Registered Land Survey No. 432 and lying west of the westerly right of way line of Xerxes Avenue South as dedicated in said YORK TERRACE.

2. That the Mayor and the City Manager are authorized to execute all documents necessary, in the opinion of the City Attorney, to effect the transfer of this property.

Dated: June 3, 2014

Attest: \_\_\_\_\_  
Debra A. Mangen, City Clerk

\_\_\_\_\_  
James B. Hovland, Mayor

STATE OF MINNESOTA)  
COUNTY OF HENNEPIN) SS  
CITY OF EDINA )

**CERTIFICATE OF CITY CLERK**

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of June 3, 2014, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
City Clerk

**ENGINEERING DEPARTMENT**

7450 Metro Boulevard • Edina, Minnesota 55439  
www.EdinaMN.gov • 952-826-0371 • Fax 952-826-0392



City Of Edina, Minnesota  
DEPARTMENT OF ADMINISTRATION

4801 West 50<sup>th</sup> Street, Edina, Minnesota 55424-1394  
Phone ☐ (952) 927-8861 TDD ☐ (952) 826-0379 Fax ☐ (952) 826-0390

PUBLIC RIGHT OF WAY VACATION APPLICATION

Applicant XERVES INVESTORS, LLC (DOUG BOBER)  
Print Name  
Address 1300 E. WOODFIELD RD. SCHAUMBURG, IL 60173  
Street City/State Zip  
Telephone No. 847-592-3366 Fax No. 847-592-3365

I hereby petition the City Council of the City of Edina to vacate all of the following described public right of way pursuant to M.S. 412.851 and Edina Code Section 24-191:

☒ Street ☐ Alley ☐ Utility Easement  
☐ Drainage Easement ☐ Other \_\_\_\_\_

Legal description of the area proposed to be vacated (*Please note all legal descriptions shall be transmitted electronically in a Word documents to the City of Edina City Clerk: Dmangen@edinamn.gov*):

SEE ATTACHED

Does the area proposed to be vacated or any part thereof terminate at or abut upon any public water?

☐ Yes ☒ No

*Please note if the area requested to be vacated terminates at or abuts upon any public water, no vacation shall be made unless written notice of the petition is served by certified mail upon the commissioner of natural resources by the City of Edina thirty days before any Council action.*

- Attach a copy of a scaled drawing showing in full detail the area proposed to be vacated.
- Include the vacation fee of \$450.00 with your application.

THE MINNESOTA DATA PRACTICES ACT requires that we inform you of your rights about the private data we are requesting on this form. Private data is available to you, but not to the public. We are requesting this data to determine your eligibility for a license from the City of Edina. Providing the data may disclose information that could cause your application to be denied. You are not legally required to provide the data, however, refusing to supply the data may cause your license to not be processed. Under MS 270.72, the City of Edina is required to provide the Minnesota Department of Revenue your MN Tax ID Number and Social Security Number. The Department of Revenue may supply information to the Internal Revenue Service. In addition, this data can be shared by Edina City Staff, Department of Public Safety, Hennepin County Auditor, Bureau of Criminal Apprehension, Hennepin County Warrant Office, Ramsey County Warrant Office and other persons or entities deemed necessary for verification of information submitted in the application. Your signature on this application indicates you understand these rights.

I request that my residence address and telephone number be considered private data. My alternative address and telephone number are as follows:

Address 1300 E. WOODFIELD RD. SCHAUMBURG, IL Telephone Number 847 592-3366

Date Initiated 4/25/14

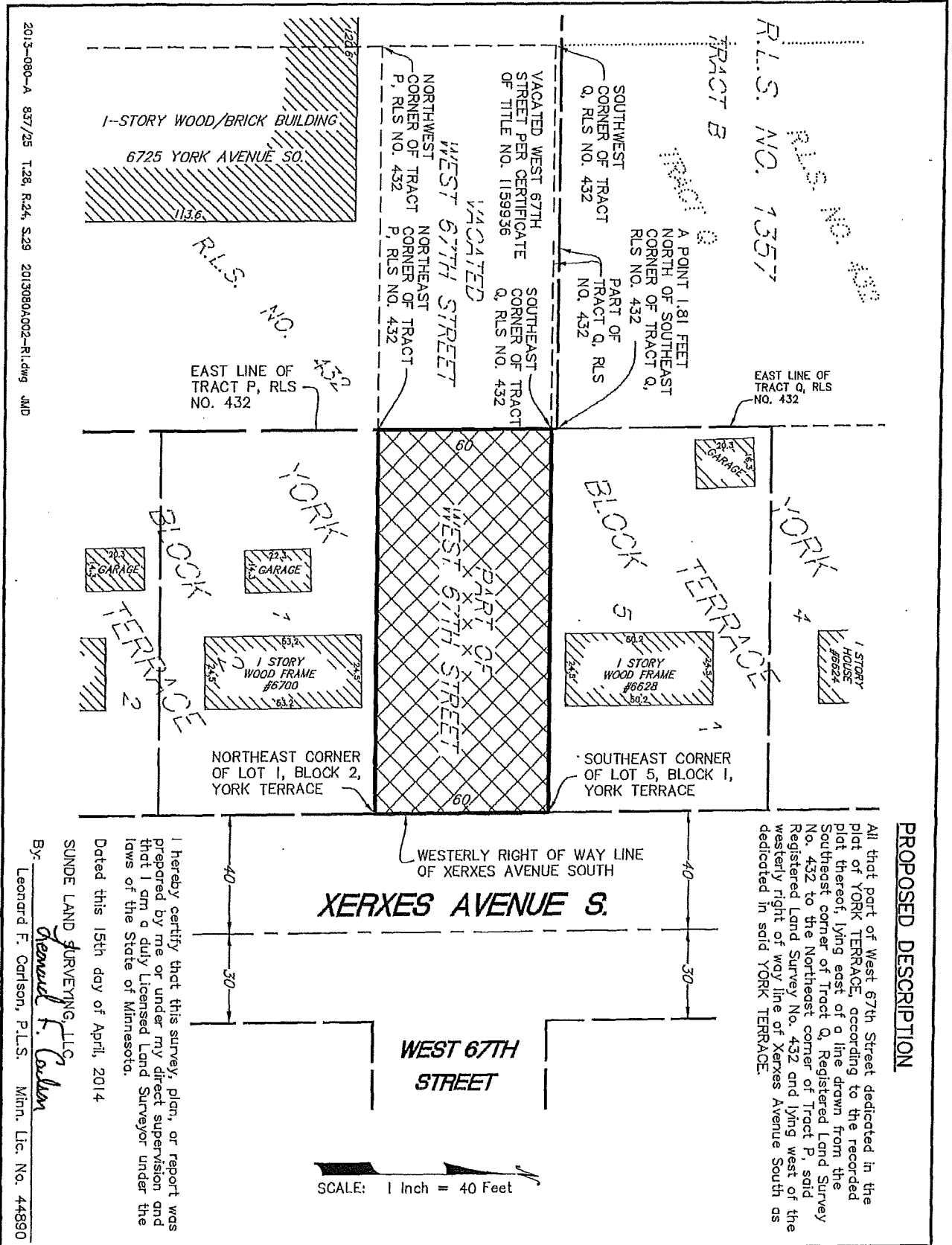
Signature [Signature]

04/21/2014

Account No. 1001.4391

# PROPOSED DESCRIPTION

All that part of West 67th Street dedicated in the plat of YORK TERRACE, according to the recorded plat thereof, lying east of a line drawn from the Southeast corner of Tract Q, Registered Land Survey No. 432 to the Northeast corner of Tract P, said Registered Land Survey No. 432 and lying west of the westerly right of way line of Xerxes Avenue South as dedicated in said YORK TERRACE.



CITY OF EDINA  
4801 WEST 50<sup>TH</sup> STREET  
EDINA, MINNESOTA 55424  
NOTICE OF PUBLIC HEARING ON  
VACATION OF PUBLIC RIGHT-OF-WAY EASEMENT  
IN THE CITY OF EDINA  
HENNEPIN COUNTY MINNESOTA

NOTICE IS HEREBY GIVEN that the City Council of the City of Edina, Minnesota will hold a public hearing on Tuesday, June 3, 2014 at 7:00 P.M. in the Council Chambers at 4801 West 50th Street to consider a the requested vacation of the following public right-of-way easement:

PROPOSED DESCRIPTION

All that part of West 67th Street dedicated in the plat of YORK TERRACE, according to the recorded plat thereof, lying east of a line drawn from the Southeast corner of Tract Q, Registered Land Survey No. 432 to the Northeast corner of Tract P, said Registered Land Survey No. 432 and lying west of the westerly right of way line of Xerxes Avenue South as dedicated in said YORK TERRACE.

All persons who desire to be heard with respect to the question of whether or not the above proposed street right of way and utility and drainage vacation is in the public interest and should be made shall be heard at said time and place. The Council shall consider the extent to which such proposed street vacation affects existing easements within the area of the proposed vacation and the extent to which the vacation affects the authority of any person, corporation, or municipality owning or controlling electric, telephone or cable television poles and lines, gas and sewer lines, or water pipes, mains, and hydrants on or under the area of the proposed vacation, to continue maintaining the same or to enter upon such easement area or portion thereof vacated to maintain, repair, replace, remove, or otherwise attend thereto, for the purpose of specifying, in any such vacation resolution, the extent to which any or all of such easement, and such authority to maintain, and to enter upon the area of the proposed vacation, shall continue.

BY ORDER OF THE EDINA CITY COUNCIL  
Debra Mangen, City Clerk

Dated: May 6, 2014

PLEASE PUBLISH IN THE Edina SUN CURRENT, THURSDAY, MAY 15 AND 22, 2014  
SEND TWO AFFIDAVITS OF PUBLICATION  
BILL TO EDINA CITY CLERK



## Hennepin County **Memo**

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Hennepin County Examiner of Titles Office  
A-701 Government Center  
300 South Sixth Street  
Minneapolis, MN 55487-0071  
Phone: 612-348-3191  
Fax: 612-348-3872

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Date: March 21, 2014

To: Cathy Busch, Title Examiner  
North American Title Company

From: Beth Asmussen, Deputy Examiner of Titles

Subject: 14-085/Certificates of Title Nos. 193410 and 1380227

I decline to issue a directive to add the vacated street described in resolution document no. 4734665 to the above certificates of title. A proceeding subsequent will be required and notice given to the City of Edina as the description in the resolution is vague. The proceeding subsequent petition should contain a legal description for that part of West 67<sup>th</sup> Street intended to be vacated by said resolution. An adjudication is required so that there is not a gap between the part of vacated West 67<sup>th</sup> Street added by court order to what is now Certificate of Title No. 1159936 and the part of vacated West 67<sup>th</sup> Street described in resolution document no. 4734665.



Doc No **T4734665**

Certified, filed and/or recorded on  
3/3/10 12:00 PM

Office of the Registrar of Titles  
Hennepin County, Minnesota

Michael H. Cuniff, Registrar of Titles  
Jill L. Alverson, County Auditor and Treasurer

Deputy 26

Pkg ID 516603

**Doc Name: Resolution**

Document Recording Fee \$46.00

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**Document Total** \$46.00

**Existing Certs**

**New Certs**

1317943

This cover sheet is now a permanent part of the recorded document.

1317943

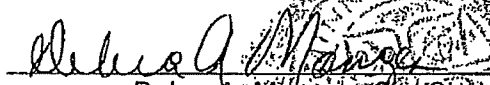
STATE OF MINNESOTA )  
COUNTY OF HENNEPIN ) SS  
CITY OF EDINA )

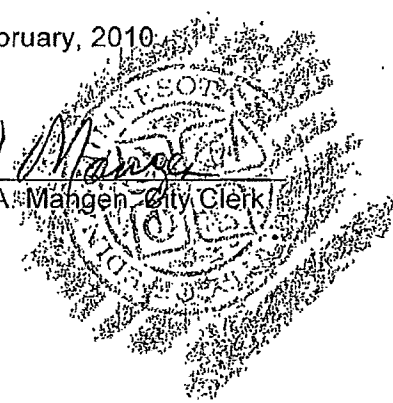
CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina, do hereby certify that the attached and foregoing document described as follows:

Minutes of Edina City Council, October 18, 1965, containing on Page 234 a Resolution of the Edina City Council resolving that a portion of West 67<sup>th</sup> Street is vacated is a true and correct copy of the original record on file in the office of the City Clerk of the City of Edina, Minnesota.

Witness my hand and seal of the City of Edina this 9th day of February, 2010.

  
Debra A. Mangen City Clerk



1153522  
FATCO Box 537



PUBLIC HEARING ON PROPOSED ASSESSMENT FOR STREET OILING FOR 1965. Tabulation of assessment was given by Mr. Hyde as \$11,315.36 total assessable cost to be levied on 40,412 feet, all streets having been named in Notice of Proposed Assessments as contained on page 226 of this Minutes Book, at a cost of 28¢ per assessable foot. There were no objections made at the meeting and no written objections had been made prior thereto. VanValkenburg then offered the following Resolution and moved its adoption:

RESOLUTION ADOPTING AND CONFIRMING ASSESSMENT  
1965 OILING IMPROVEMENT

BE IT RESOLVED by the Village Council of the Village of Edina, Minnesota, as follows:

1. The Village has given notice of hearing as required by law on the proposed assessment roll for the improvement hereinafter referred to, and at such hearing held on October 18, 1965, has considered all oral and written objections presented against the levy of such assessments.
2. Each of the assessments as set forth in the assessment roll on file in the office of the Village Clerk for the 1965 Oiling Improvement does not exceed the local benefits conferred by said improvement upon the lot, tract or parcel of land so assessed, and all of said assessments are hereby adopted and confirmed as the proper assessments on account of said respective improvement to be spread against the benefited lots, parcels and tracts of land described therein.
3. The total amount of such assessment shall be payable in one installment, said installment, together with interest at 5% to be payable with the general taxes for the year 1965.
4. The Village Clerk shall forthwith prepare and transmit to the County Auditor a copy of this resolution and a certified duplicate of said assessments, with each then unpaid installment and interest set forth separately, to be extended on the tax lists of the County in accordance with this resolution.
5. The Clerk shall also mail notice of any special assessments which may be payable by a county, by a political subdivision or by the owner of any right-of-way as required by Minnesota Statutes, Section 429.061, Subdivision 4, and if any such assessment is not paid in a single installment, the Village Treasurer shall arrange for collection thereof in installments, as set forth in said section.

Motion for adoption of the Resolution was seconded by Tupa and on Rollcall there were four ayes and no nays and the Resolution was adopted.

ATTEST:

Flourance B. Hallberg  
Village Clerk

Victor O. Brundage Jr.  
Mayor

PORTION OF W. 67TH STREET VACATION AGAIN ORDERED. Mr. Hyde stated that because of an error in publication, the vacation process had been repeated for a portion of W. 67th St. MacMillan then offered the following Resolution and moved its adoption

RESOLUTION VACATING A PORTION OF  
WEST 67TH STREET

WHEREAS, two weeks' published, posted and mailed notice of a Hearing to be held on October 18, 1965, at 7:00 P.M., on the proposed vacation of the street hereinafter described has been given and made, and a Hearing has been held thereon by the Village Council:

NOW, THEREFORE, be it resolved by the Village Council of the Village of Edina, Hennepin County, Minnesota, that that part of West 67th Street lying west 129.54 feet from the east property line of York Terrace extended, all as platted and of record in the office of the Register of Deeds in and for Hennepin County, Minnesota, be and is hereby vacated effective November 22, 1965, unless on or before said date this Resolution is amended, annulled or rescinded by the Village Council.

Motion for adoption of the Resolution was seconded by Tupa and on Rollcall all voted aye and the Resolution was unanimously adopted.

ATTEST:

Flourance B. Hallberg  
Village Clerk

Victor O. Brundage Jr.  
Mayor

SUMMIT AVE. FROM VERNON AVE. SOUTH VACATED. Manager Hyde presented petition of Grandview Construction Company, 5000 Normandale Road, for vacation of a portion of Summit Ave. VanValkenburg offered the following Resolution:

RESOLUTION VACATING A PORTION OF  
SUMMIT AVENUE

WHEREAS, two week's published, posted and mailed notice of a Hearing to be held on October 18, 1965, at 7:00 P.M., on the proposed vacation of the street hereinafter described has been given and made, and a Hearing has been held thereon by the Village Council;

LEAK confusing  
- CFF #1317943 - per fier  
vacating a portion of  
W. 67th St.

IAA587